Patent Application
Attorney Docket No.: 57983.000039
Client Reference No.: 13766ROUS02U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	
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Christopher M. Skarica et al.	:	Group Art Unit: 2633
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Appln. No.: 09/928,745	:	
	:	Examiner: Dalzid E. Singh
Filed: August 14, 2001	:	
	:	
For: OPTICAL NETWORK SUBSCRIBER ACCESS ARCHITECTURE	:	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RE-REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicants hereby re-request a pre-appeal brief conference in the above-referenced patent application. Applicants previously requested a pre-appeal brief conference in the above-referenced patent application, but that previously request was deemed improper for exceeding the page limit.

The present patent application was filed on August 14, 2001, claiming priority to U.S. Provisional Patent Application No. 60/247,054. On January 12, 2005, an initial Office Action was issued rejecting claims 1-36 under 35 U.S.C. § 103 as being unpatentable over Bears (U.S. Patent No. 5,349,457) alone or in combination with Kimbrough et al. (U.S. Patent No. 6,362,908). Despite various attempts to distinguish the present patent application from the cited references, the Office has maintained its rejections of claims 1-36, which are certain to be overturned on appeal. Rather than further time being spent addressing these references, Applicants have elected to pursue the new pilot program.

As set forth in greater detail in Applicant's responses dated April 12, 2005, and September 13, 2005, the cited references, taken either alone or in combination, fail to disclose, or even suggest, the elements set forth in the pending claims. Specifically, regarding claim 1, Applicants

respectfully submit that Bears fails to disclose, or even suggest, dual optical switch fabric modules that are coupled to transmit signals to and receive signals from subscriber service modules, and include a first switch fabric module and a second switch fabric module, as presently claimed. Indeed, Bears explicitly discloses an electrical based multiplexer/demultiplexer (e.g., 60) and electrical/optical converters (e.g., 54, 58) in the disclosed fiber service terminals (FST), thereby precluding the use of any optical switching means. Despite this clear disclosure by Bears, the Examiner asserts that Bears teaches optical switching in Figure 8. However, similar to Figure 4, Figure 8 also shows a fiber service terminal (FST) with an electrical-based multiplexer/demultiplexer (i.e., MUX) and electrical/optical converters (i.e., EOM), as well as an electrical-based dual TX/RX switch plane, thereby precluding the use of any optical switching means. The Examiner specifically points to column 8, lines 10-12, for a teaching that the disclosed dual TX/RX switch plane reroutes multiplexed optical signals over unaffected fibers. However, a fair and clear contextual reading of column 8, lines 10-12, reveals that multiplexed optical signals are routed over a non-faulted single mode fiber via an optical transmitter (i.e., TX) and an electrical/optical converter (i.e., EOM) after being electrically switched in the electrical-based dual TX/RX switch plane to compensate for a fault in another single mode fiber. Accordingly, it is respectfully submitted that Bears fails to disclose, or even suggest, the claimed invention.

Regarding claim 31, Applicants respectfully submit that Bears fails to disclose, or even suggest, optically switching and aggregating a received signal, as presently claimed. Indeed, Bears explicitly discloses an electrical-based multiplexer/demultiplexer (e.g., 60) and electrical/optical converters (e.g., 54, 58) in the disclosed fiber service terminals (FST), thereby precluding the use of any optical switching means. Despite this clear disclosure by Bears, the Examiner asserts that Bears teaches optical switching in Figure 8. However, similar to Figure 4, Figure 8 also shows a fiber service terminal (FST) with an electrical-based multiplexer/demultiplexer (i.e., MUX) and electrical/optical converters (i.e., EOM), as well as an electrical-based dual TX/RX switch plane, thereby precluding the use of any optical switching means. The Examiner specifically points to Figure 8 for a teaching that the disclosed dual TX/RX switch plane reroutes multiplexed optical signals over unaffected fibers.

However, a fair and clear contextual reading of Figure 8 and its corresponding specification disclosure reveals that multiplexed optical signals are routed over a non-faulted single mode fiber via an optical transmitter (i.e., TX) and an electrical/optical converter (i.e., EOM) after being electrically switched in the electrical-based dual TX/RX switch plane to compensate for a fault in another single mode fiber. Accordingly, it is respectfully submitted that Bears fails to disclose, or even suggest, the claimed invention.

Regarding claim 18, Applicants respectfully submit that that Bears and Kimbrough et al., either alone or in combination, fail to disclose, or even suggest, a modular switch comprising dual optical trunking modules, dual optical switch fabric modules, and a plurality of subscriber service modules, wherein the dual optical trunking modules are coupled to at least one of the dual optical switch fabric modules and the dual optical switch fabric modules are coupled to the subscriber service modules, as presently claimed. Indeed, Bears explicitly discloses an electrical-based multiplexer/demultiplexer (e.g., 60) and electrical/optical converters (e.g., 54, 58) in the disclosed fiber service terminals (FST), thereby precluding the use of any optical switching means. Kimbrough et al. also explicitly discloses only electrical-based switching means. Additionally, claim 18 recites that the modular switch comprises a plurality of subscriber service module. The Examiner asserts that Bears must teach these elements since Bears shows a fiber service terminal (FST) connected to a subscriber. However, Bears explicitly teaches away from having such elements in its fiber service terminal (FST) and asserts that such capability is better located elsewhere at the subscriber (e.g., HOT) (see Figure 5; and column 6, line 68, to column 7, line 6). As stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Accordingly, it is respectfully submitted that Bears and Kimbrough et al., either alone or in combination, fail to disclose, or even suggest, the claimed invention.

Regarding claims 2-17, 19-30, and 32-36, the Examiner alleges that Bears, either alone or in combination with Kimbrough et al., teaches the claimed invention as respectively recited therein. However, since independent claims 1, 18, and 31 should be allowable as discussed above, claims 2-17, 19-30,

and 32-36 should also be allowable at least by virtue of their dependency on independent claims 1, 18, and 31. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. Indeed, the Examiner acknowledges the shortcomings of Bears with respect to several of these claims (e.g., claims 2-4, 7, 10, 13, 15, 20, 21, 24, 27, & 34), but still asserts that such shortcomings are inherent and/or well known. However, as stated in MPEP § 2112, "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Also, there is no support in the record for the Examiner's conclusions that certain identified features are "old and well known." In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his positions. Additionally, Bears explicitly teaches away from a modular switch comprising at least one subscriber service module and a plurality of subscriber service module slots, as claimed, by asserting that such capability is not located in its fiber service terminal (FST) but rather is better located elsewhere at the subscriber (e.g., HOT) (see column 6, line 68, to column 7, line 6). As stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Accordingly, it is respectfully submitted that Bears, either alone or in combination with Kimbrough et al., fails to disclose, or even suggest, the claimed invention.

For the foregoing reasons, Applicants re-request an appeal conference be convened to advise Applicants whether the Office will 1) allow the present claims, 2) reopen prosecution and issue a new office action, or 3) allow this case to proceed to appeal.

Respectfully submitted,

Thomas E. Anderson
Registration No. 37,063

TEA/vrp

Hunton & Williams LLP
1900 K Street, NW
Washington, D.C. 20006-1109
Tel. (202) 955-1500
Fax (202) 778-2201

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